IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

DR. DAVID BRUCE ALLEN **PLAINTIFF**

v. **Civil No. 1:12-cv-57-HSO-RHW**

JACKSON COUNTY, MISSISSIPPI, ***by and through its Board of Supervisors,***
MIKE BYRD, ***Sheriff, in his individual capacity, and***
UNKNOWN JOHN AND JANE DOES A-Z,
in their official and individual capacities **DEFENDANTS**

ORDER DENYING PLAINTIFF'S MOTION TO REOPEN DISCOVERY

BEFORE THE COURT is Plaintiff David Bruce Allen's Motion [35] to Reopen Discovery. Defendant Mike Byrd, in his individual capacity, has filed a Response [37]. After consideration of the Motion, the record, and relevant legal authorities, and for the reasons discussed below, the Court finds that Allen's Motion [35] should be denied.

I. FACTS AND PROCEDURAL BACKGROUND

Allen commenced this civil action on February 22, 2012, seeking compensatory and punitive damages of no less than $50,000,000. Pl.'s Compl. [1] at p. 2. On February 22, 2013, the Court denied without prejudice Defendants' Motion to Dismiss [4] and required Allen to file an Amended Complaint within fourteen days "recounting in more detail the facts surrounding his alleged injuries and reasonably explaining the types of claims he is pursuing." Order [5] at p. 3. Allen requested and received two extensions of time and filed his Amended Complaint [8], seeking damages of over $551,000,000, on March 13, 2013.

A review of the docket reveals that Allen has received seven extensions of time in this case. His eighth request for an extension of time was denied, and he has filed a ninth request seeking reconsideration of that denial. The instant Motion [35] to Reopen Discovery is Allen's tenth request for an extension of time.

The only discovery that has been allowed thus far in this case concerns qualified immunity. Allen received two extensions of time to conduct such discovery, and the deadline for doing so expired five months ago on August 15, 2013. Despite the four months that Allen had to conduct discovery concerning qualified immunity, he propounded no written discovery requests. Def.'s Resp. [37] at p. 2. He did conduct two depositions. *Id.* at p. 3. Allen's second extension of the qualified immunity discovery deadline was based upon his representation that he had "reconnected with a prior witness who had boxes of apparently/potentially relevant documents" and "developed significant witness information that in all fairness, needs to be delivered to the Defendant." Pl.'s Mot. [25] at pp. 1-2. Despite this representation, Allen never "delivered" the identity of any witnesses or produced any documents, much less "boxes of documents." Def.'s Resp. [37] at p. 2.

The entirety of Allen's purported basis for now requesting the reopening of discovery concerning qualified immunity follows:

> I.
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> There have been material changes in the circumstances herein which may lead to the discovery of new information, testimony and witnesses.
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> II.
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> The indictment and subsequent guilty plea of Mike Byrd, former Sheriff of Jackson County, Mississippi[,] brings to light various information which could not previously be

> disclosed because it was confidential and protected under Mississippi law. The Jackson County District Attorney now corroborates the fact that Mike Byrd has intimidated witnesses wishing to tell the truth and whose testimony would be detrimental to Byrd. Further, the DA's office filed a Motion to Revoke Byrd's bond for his further intimidation of witnesses.
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> III.
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> Plaintiff would submit that there is good cause to reopen discovery to allow the possibility of additional witnesses with significant information may come forward with the truth without the fear of threats and intimidation. Additionally, further discovery would allow the opportunity to reveal the truth in this matter and therefore this Court moves this Court to reopen discovery.

Pl.'s Mot. [35] at pp. 1-2.

II. DISCUSSION

A scheduling order "may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). Given the record in this case, Allen's nonspecific and nebulous representation that additional discovery "possibly" "may lead to the discovery of new information" and "additional witnesses with significant information" because of "various information which could not previously be discovered" does not establish good cause to reopen discovery on the issue of qualified immunity. This conclusion is buttressed by Allen's repeated delays and lack of diligence in prosecuting this case and his earlier empty and apparently untrue representation five months ago that "significant witness information" and "boxes of apparently/potentially relevant documents" had been secured and would be delivered to Defendants. Pl.'s Mot. [25] at pp. 1-2. This falls short of the standard required to show good cause for a tenth extension of time in this case. Allen's Motion [35] to Reopen Discovery is not well taken and should be denied.

III. CONCLUSION

IT IS, THEREFORE, ORDERED AND ADJUDGED that, Plaintiff David Bruce Allen's Motion [35] to Reopen Discovery is **DENIED**.

SO ORDERED AND ADJUDGED, this the 17th day of January, 2014.

s/ Halil Suleyman Ozerden
HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE